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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petition of Global NAPs, Inc. for)
Preemption of the Jurisdiction of the)
Jurisdiction of the New Jersey Board of)
Public Utilities Pursuant to Section)
252(e)(5) of the Telecommunications)
Act of 1996)

CC Docket No. 99-154

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FURTHER REPLY COMMENTS OF BELL ATLANTIC¹

The argument of Global NAPs, Inc. ("GNAPs") that this proceeding has any life left is invalid on its face, and GNAPs' petition for preemption should be dismissed as moot.²

In its Further Comments, GNAPs claims that the Commission should issue a ruling on GNAPs' application in New Jersey to opt into another carrier's interconnection agreement, because the New Jersey Board of Public Utilities ("Board") failed to act within what GNAPs calculates to be the statutory deadline. However, the Board has now acted, so GNAPs is no longer deprived of a decision. In fact, the only reason for preemption that GNAPs stated in its Petition was that it was "entitled" to a ruling on its application. It now has that ruling, and there is nothing left for this Commission to address.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² See Petition of Global NAPs, Inc. (filed May 5, 1999) ("Petition"), Further Comments of Global NAPs, Inc. (filed July 15, 1999) ("Further Comments").

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Moreover, GNAPs has not only conceded that Board action would moot this proceeding, but it even stated that it “would strongly prefer prompt action by the Board that moots the pending petition to the further delays that could easily follow a Commission decision.” Reply Comments of Global NAPs, Inc. at 5 (filed June 3, 1999).

Because it clearly does not like the ruling it got in New Jersey, however, GNAPs is not only ignoring its earlier preference but is attempting to change its entire argument for preemption. GNAPs now makes the ridiculous claim that the Board’s decision is flawed, because it took into account this Commission’s February 1999 declaratory ruling that Internet-bound traffic is interexchange and predominantly interstate, not local, and that this Commission should similarly act by ignoring its own earlier ruling. *See Inter-Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) (“Declaratory Ruling”). Of course, the reason the Board delayed its ruling was that this Commission had said that it intended shortly to interpret the law concerning the nature of Internet-bound traffic, and the Board quite correctly recognized that this interpretation would be relevant to its own decision.

And, in the Declaratory Ruling, the Commission simply reaffirmed the pre-existing law in several key respects:

- It reaffirmed that reciprocal compensation under section 251 of the Act applies only to local traffic and not to traffic that is interexchange and interstate in nature (¶ 7).
- It reaffirmed that traffic must be classified as local or non-local based upon the beginning and end points of a complete end-to-end call, i.e., the “totality of the communication” (¶ 13).
- It reaffirmed, based on a long series of consistent precedents over more than a decade, that Internet calls “do not terminate at the [Internet Service Provider’s] local server ... but continue to the ultimate destination or destinations, specifically at an Internet website that is often located in another state” (¶ 12).

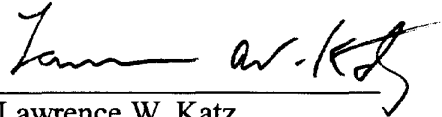
- And it reaffirmed that Internet-bound traffic “is non-local interstate traffic” (n.87).

As a result, the Commission expressly held that Internet-bound calls are non-local in nature, and that “the reciprocal compensation requirements of section 251(b)(5) of the Act and ... the Commission’s rules do not govern inter-carrier compensation for this traffic.” *Id.* It was entirely appropriate for the Board to take that reaffirmation of existing law into account when rendering its own decision.

Finally, GNAPs contends that, if it had to use the sole remedy provided in the Act and challenge the Board’s ruling in federal district court, its relief would be further delayed. *See* 47 U.S.C. §252(e)(6). However, GNAPs already has a ruling on its application – from the New Jersey Board. That ruling required the parties to file an interconnection agreement yesterday. Once the Board rules on GNAPs’ agreement, the matter will be ripe for review in federal district court, should GNAPs choose to pursue that remedy. Just because GNAPs does not like the Board’s ruling does not warrant ignoring the Act. The simple fact is that Congress expressly made determinations by state commissions reviewable in federal district courts, and that remedy is exclusive. *See, e.g., Illinois Bell Tel. Co. v. Worldcom Technologies*, No. 98-3150 at 7 (7th Cir. June 18, 1999) (“Congress envisioned suits reviewing ‘actions’ by state commissions and [] those suits were to be brought exclusively in the federal courts”); *Michigan Bell Tel. Co. v. MFS Intelenet of Michigan, Inc.*, 16 F.Supp. 2d 817, 824 (W.D. Mich. 1998) (Federal district courts have “exclusive jurisdiction” over state decisions relating to interconnection agreements).

Therefore, GNAPs' Petition must be dismissed.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

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July 20, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 1999, copies of the forgoing "Further Reply Comments" were sent by first class mail, postage prepaid, to the parties on the attached list.

A handwritten signature in black ink, appearing to read "Jennifer L. Hoh". The signature is written in a cursive, flowing style.

Jennifer L. Hoh

* Via hand delivery.

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